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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 20 2007
EAC 05 061 53617

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed an appeal, which the director deemed untimely and treated as a motion to reconsider. After considering the motion, the director issued a decision affirming the denial of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

This petition, filed on December 28, 2004, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Environmental Science issued by Hokkaido University in Japan on September 30, 1994 and a Master of Science degree issued by Aligarh Muslim University on January 13, 1988. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given specialty is so important that any alien qualified to work in that specialty must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 219, n. 6.

Form I-140, Immigrant Petition for Alien Worker, Part 5 lists the petitioner's occupation as a "Technology & Patent Specialist." At the time of filing the I-140 petition, the petitioner was a "Candidate for Juris Doctor" at Suffolk University Law School in Boston, Massachusetts. In response to the director's request for evidence, the petitioner submitted Form ETA-750B, Statement of Qualifications of Alien, reflecting that the petitioner was a law student at Suffolk University Law School from August 2001 to January 2005. Form ETA-750B, Part 9, lists the "Occupation in which Alien is Seeking Work" as Intellectual Property and Science Patents.

The petitioner's initial submission included a November 28, 2000 letter from E[redacted] confirming the petitioner's acceptance of a job offer "for a position as Technical Specialist" with her law firm. According to his Form ETA-750B, the petitioner worked at [redacted] as a "Technology Specialist" from January 2001 to August 2002, during which time he began pursuing his law degree. The petitioner listed his duties for this law firm as follows: "Prepared and prosecuted U.S. and International patent applications for various biotech companies. Provided patentability and infringement opinions for various biotechnology clients. Due diligence opinions; Evaluation of scientific data for novelty and patentability."

The petitioner's initial submission also included a July 22, 2003 letter from [redacted], President and Chief Executive Officer, [redacted] reflecting the petitioner's acceptance of "the position of Technology Specialist, in the Intellectual Property group" for that company and describing the petitioner's duties as follows:

- Assist in patent preparation and prosecution of U.S. and international patents;
- Assist in investigations and preparation of opinions on issues relating to patentability;
- Draft patentability reports, preparing and prosecuting patent applications;
- Advise and educate employees on IP policies, practices and protection of IP;
- Interact with senior managers, scientists, and outside patent counsel in preparation and prosecution of patent applications . . . .

Information listed on the petitioner's Form ETA-750B indicates that he worked at [redacted] from August 2003 through April 2004 while attending law school.

In response to the director's request for evidence, the petitioner submitted a copy of his [redacted] degree issued by Suffolk University Law School on January 26, 2005. We note that the petitioner received his law degree subsequent to the petition's filing date. The petitioner also submitted a December 14, 2004 "Receipt for Massachusetts Bar Application," but there is no evidence showing that he had passed the Massachusetts Bar Examination as of the I-140 petition's filing date. In a December 25, 2004 letter accompanying the petition, the petitioner stated that he intended to take the Massachusetts Bar Examination on February 25th and 26th, 2005. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the petitioner's career cannot retroactively establish eligibility as of the petition's filing date.

The petitioner's December 25, 2004 letter further stated: "A proof of certification from the Massachusetts Bar Examination will be provided on a later date." The record, however, includes no such evidence.

In May 2004, the petitioner began working for his present employer, [redacted], as a "Patent/Technology Specialist." A February 9, 2005 letter of support from Dr. [redacted], Executive Vice President, Science and Technology, [redacted], Cambridge, Massachusetts, states:

> [redacted] develops novel anti-cancer therapeutics, which are based on tumor-selective antibodies that are conjugated to potent cytotoxic agents.
>
> * * *
>
> As Head of R&D, I am ultimately responsible for the appropriate protection of the intellectual property underlying these novel developments and novel therapeutic agents at ImmunoGen. This process involves identifying and defining inventions, and then describing them in documents which can be used by patent attorneys to write patent applications. Although ImmunoGen uses patent attorneys at different law firms who assist in the writing of the applications, then file the applications with the U. S. Patent and Trademark Office, and finally assist and guide us in the ensuing prosecution of the applications, this still requires a large effort at the company.

> The patent portfolio grew to such a size and complexity that it became very difficult for me to manage this process without professional help. Such a professional needed to be able to grasp and understand the science at [redacted], which ranges from cellular and molecular biology and immunology to pure chemistry and pharmaceutical manufacturing, and its relation to intellectual property and its protection with patents. We advertised for such a position, evaluated several applicants, and decided to offer the position to [the petitioner], who had outstanding qualifications and who was the only qualified candidate for the advertised position.

Pursuant to *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 220-221, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Dr. [redacted]r further states:

> [The petitioner] is well and very broadly educated and brought along extensive experience in relevant areas. He has an undergraduate degree in chemistry and a master degree in biotechnology from an Indian University and master and a doctorate degree in environmental science from a University in Japan. Then he worked as scientist in a pharmaceutical company in Japan for more than 2 years. He continued his science career in the U.S.A. as a research follow at the Massachusetts General Hospital in Boston and at Brown University School of Medicine, where he worked on the application of molecular biology to medical problems. Finally he was a scientist in cancer research at the Dana Farber Cancer Institute. This education and employment clearly demonstrates that [the petitioner] has a unique, broad scientific knowledge. This knowledge matches exceptionally well with the requirements of the position at ImmunoGen.
>
> During his scientific research time at the Dana Farber Cancer Institute, [the petitioner] decided that he wanted to make his contribution to the development of novel treatments for cancer and other diseases at a pharmaceutical or biotechnology company as a patent attorney. [The petitioner] then acquired legal experience and knowledge by working in law firms, pharmaceutical companies, and by attending Suffolk University Law School in Boston, which he successfully finished this year. He has written patent applications in diverse biological fields, such as small molecule syntheses, production of therapeutic antibodies, immunoconjugated drug targeting, genetic engineering, [redacted] spectroscopy, and hemodialysis. Again, [the petitioner] had acquired an additional set of skills that is critical for the position at ImmunoGen.
>
> I would like to summarize by saying that [the petitioner's] background makes him an ideal and uniquely qualified candidate for the work and responsibilities that are part of the position at [redacted]

We note here that any objective qualifications that are necessary for the performance of a Patent/Technology Specialist or patent attorney position can be articulated in an application for alien labor certification. It cannot suffice to state that the petitioner possesses useful skills or a unique background as a patent attorney or former biomedical researcher. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under

the jurisdiction of the Department of Labor. *See Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 221. We accept that the petitioner possesses the requisite experience and education for managing ImmunoGen's patent portfolio, but his ability to impact the intellectual property field beyond his work for his immediate employers has not been adequately demonstrated.

A December 29, 2004 letter from [redacted] Adjunct Professor at Suffolk University Law School, and patent attorney for [redacted], states:

> [The petitioner] is one of my students. I have relied on that interaction as well as study of his background and my knowledge of the company that employs him as well as the fields of biotechnology and intellectual property.
>
> * * *
>
> While attending Suffolk University Law School 2000-2004 (studies completed December 2004) for gaining a law degree with focus on intellectual property, [the petitioner] worked for several companies and law firms, well known to me in mixed scientist-legal assistance capacities under attorney supervision.
>
> * * *
>
> U.S. patent attorneys counsel clients not only on U.S. patent protection but also as to foreign protection (with aid of foreign associates). [The petitioner] as a U.S. patent attorney (fluent in Hindi, English and Japanese with experience of living, studying and working in U.S., India, and Japan) presents a unique resource in this area of endeavor. I believe he has great potential for productive work in U.S. intellectual property as an adjunct to scientific research, commercial exploitation of results of research in the U.S. and abroad and in international patenting, trade and licensing.

We cannot ignore Professor [redacted] statement that the petitioner's work in U.S. intellectual property thus far in his career has been "under attorney supervision." In this case, there is no evidence showing that the petitioner's past record of achievement as a patent attorney significantly distinguishes him from others in his field. Pursuant to *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 219, n. 6, the petitioner must demonstrate that his past legal work has influenced the greater field. The expectation that petitioner's work as a patent attorney will present a significant benefit to the United States at some undetermined future date is not adequate to demonstrate his eligibility for the national interest waiver. Rather, the petitioner must establish that his work in intellectual property law has already had a significant national impact as of the petition's filing date. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45, 49.

Additional letters of support focus on the petitioner's objective qualifications, which are amenable to labor certification, rather than addressing his past record of achievement in the intellectual property field. A January 31, 2005 letter from [redacted], Partner, [redacted], states:

> I first became acquainted with [the petitioner's] work when he interned at [redacted] while he was a student as Suffolk University Law School to polish his legal writing and advocacy skills in pursuing patent applications and patent litigation.

> I have reviewed [the petitioner's] qualifications and skills and I find that [the petitioner] is an extremely well educated individual. He has an undergraduate degree in chemistry, and postgraduate degrees in biotechnology (India), a doctorate degree in environmental sciences (Japan), and a Juris Doctor degree (USA). . . . By acquiring these degrees, he has shown that he is an exceptionally talented individual.
>
> * * *
>
> [The petitioner] has gained valuable experience in the writing and prosecuting U.S. and international patent applications. His patent writing experience spans diverse biological fields such as Raman spectroscopy, hemodialysis, small molecule syntheses, production of therapeutic antibodies, immunoconjugated drug targeting, and genetic engineering.

A January 15, 2005 letter from [redacted] a former Director of Intellectual Property and Patent Attorney at [redacted] from 2001 to 2004, states that she has "known [the petitioner] professionally and socially since August 2003, when he applied for the position of technology specialist." [redacted]s letter further states:

> I am writing this letter to provide my strongest support for [the petitioner] . . . as an alien going beyond what is the usual, regular, or customary ability of an individual in the field of intellectual property (IP). This field ideally requires a combination of the highest degree of knowledge in sciences coupled with a substantial understanding of IP law. These skill sets are keenly desired in a candidate but are rare to find. [The petitioner] is one such candidate.

A January 12, 2005 letter from [redacted], Professor, Suffolk University Law School, states:

> [The petitioner's] educational background is not only international but also reflects a serious commitment to excellence. . . . His willingness to broaden his professional credentials by entering the legal profession in the United States at the entry level, as a student and intern, also speaks to the intensity with which [the petitioner] views his professional and personal goals.

A January 25, 2005 letter from [redacted], Associate Professor, [redacted] Law School, states:

> [The petitioner] was a student in my International Business Transactions class here at [redacted] School, in the spring semester of 2004.
>
> [The petitioner] is a highly trained molecular biologist, with a Ph.D. from a prominent Japanese university. He has put his law training to excellent use in developing an expertise in patent law. His combined knowledge of science and law make [the petitioner] one of a select group of persons with such a complex expertise.

We find that the objective qualifications discussed in the preceding letters are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 215, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of

training, education, or experience that could be articulated on an application for a labor certification. As noted previously, it cannot suffice to state that the petitioner possesses solid training or unique skills. Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *See Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 221.

The petitioner also submitted evidence relating to his work as a biomedical researcher during the 1990's. The petitioner, however, no longer performs molecular biology research. According to Dr. [redacted] February 9, 2005 letter, the petitioner's superior at ImmunoGen, the petitioner's primary responsibilities include the following:

- Evaluation of scientific data for novelty and patentability
- Determination of strategic areas for patent protection
- Scientific and legal interpretations of notice letters received from patent offices worldwide
- Evaluating IP issues of potential collaborations within and outside of USA
- Interact with senior managers, scientists, and outside corporate counsels on patent and business related issues
- Due diligence on third party patentability analysis
- Freedom to Operate searches, which provides guidelines to our scientists and collaborators if a potential invention is patentable
- Preparation and prosecution of U.S. and International patents. Such protections are protection on a global basis in countries, such as, Japan, Canada, USA, Europe, and Australia
- Providing opinions of validity/invalidity and infringement/non infringement analysis of issued or pending patents
- Participate in negotiating license agreements

The record clearly demonstrates that the petitioner seeks employment in the United States as a patent attorney rather than a molecular biology researcher. Nevertheless, we will address the evidence submitted by the petitioner relating to his accomplishments as a biomedical researcher and explain why this evidence does not meet the threshold for a national interest waiver.

The petitioner submitted evidence showing that he received a Monbusho Scholarship to attend Hokkaido University. The petitioner also submitted a document reflecting the Japanese Government's criteria for this scholarship. According to the qualification criteria, applicants "must be under 35 years of age" and "must be university or college graduates" who "have completed 16 years of school education." The document also states:

The main concepts of selection are as follows:

1. Those who have academic excellency and who are sufficiently expected to be outstanding students and to play an active role in the future of their home country.
2. A concrete and outstanding research planning.
3. In the field in which Japanese language ability necessary, those who have sufficient ability to pursue their studies.

None of the preceding criteria require significant professional accomplishment in the research field. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's Mombusho scholarship was presented for scholastic achievement and the pursuit of further academic study rather than for exceptional ability in the research field. Competition for this scholarship was limited to students "under 35 years of age" seeking to continue their education rather than experienced scientific professionals (who had already completed their advanced educational training and who did not have to compete for academic scholarships).

The petitioner also submitted a "Certificate of Merit" issued to him by Pharmacia Biotech and *Science* "in recognition of the high standard of work entered in competition for the Pharmacia Biotech & Science Prize for Young Scientists 1995."[1] On appeal, the petitioner submits a March 7, 2006 e-mail from [redacted] Editor-in-Chief of *Science*, stating that the Certificate of Merit reflected success in an "international competition among young scientists" and that Citizenship and Immigration Services (CIS) "should treat it as a recognition of outstanding scientific potential." According to the "Rules of Eligibility" submitted by the petitioner, this competition sought to recognize "only work that was performed while the entrant was a graduate student" and thus excluded professionals in the field from consideration. There is no indication that the petitioner faced competition from throughout his entire field, rather than limited to his approximate age group within that field.

In addition to the preceding awards, the petitioner submitted evidence of his professional memberships. We note, however, that recognition for achievement in one's field and professional memberships relate to the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest.

A December 31, 2004 letter from Dr. [redacted], Professor [redacted] University, Sapporo, Japan, states that the petitioner worked under his supervision "for more than 6 years." Dr. [redacted] letter further states:

> [The petitioner] performed highly innovative work and help to shape the filed [sic] of the research in understanding how the transcription of a cancer-causing gene, hst (also known as fibroblast growth factor-4) is developmentally and transcriptionally regulated in embryonic stem cell carcinoma, an in vitro model used to study the role of this gene in stomach caner.

* * *

[1] The petitioner submitted information about this award from the American Association for the Advancement of Science internet website, which states: "The top five essays from each geographic region will be forwarded to a panel of judges.... The judges may select up to three winners for each of the four geographic regions.... All regional winners will compete for the grand prize of $25,000." There is no evidence showing that the petitioner was ultimately selected as one of several regional winners or as the overall grand prize winner.

> In fact, [the petitioner] was able to publish his Ph.D. thesis in *The Journal of Biological Chemistry*, which is a peer-reviewed journal polished [sic] from United States and held in high prestige in the scientific community.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge or who completes Ph.D. research supervised by others has demonstrated significant influence on the field as a whole. While the citation history provided by the petitioner on appeal demonstrates a limited degree of interest in this one article published in 1994, he has not shown that the citation frequency of his body of work during his research career distinguishes him from other Ph.D. graduates in the molecular biology field.

A December 20, 2004 letter from Dr. [redacted], Chief Scientist, Novartis Institutes for Biomedical Research, Tsukuba, Japan, states:

> [The petitioner] worked at Novartis until June of 1997. During his stay with us he used his expertise an [sic] applied his innovative skills to make valuable contributions in elucidating the mechanism of cancer, cancer metastasis and osteoporosis and specifically and [sic] transcriptional regulation of genes involved in cancer metastasis. In spite of the fact that most of the work conducted by [the petitioner] was performed under a confidentiality agreement, he was able to persuade the management committee that he should be allowed to publish some of the scientific work he performed at [redacted], which he did by publishing his work in the internationally respected journal *Biochemical and Biophysical Research Communications*, which was well acclaimed by experts in this field.

The record, however, includes no evidence of frequent citation of this article to demonstrate the petitioner's findings were particularly influential.

Nevertheless, whatever the petitioner accomplished in the 1990's as a molecular biology researcher is irrelevant to his eligibility for a national interest waiver as a "Technology and Patent Specialist." At the time of filing the petition, the petitioner was an aspiring patent attorney. The proposed benefit of the petitioner's work in this case is intellectual property protection for his immediate employer rather than conducting and disseminating molecular biology research. The petitioner's career as molecular biology researcher ended in 2001 when he began pursuing a career path as a patent attorney. While the petitioner's past experience as molecular biology researcher may help him understand intellectual property issues within the biotechnology industry, nothing in the record indicates that he will continue performing biomedical research in the United States. As stated previously, eligibility for the national interest waiver rests upon prospective national benefit. CIS can infer future national impact from past impact in one's field, but only if the alien continues working in the same field. Patent law and molecular biology research are clearly not the same field.

We note that the preceding recommendation letters submitted by the petitioner were limited to individuals affiliated with institutions where the petitioner has studied or worked. With regard to letters of support from those who have supervised the petitioner's work, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner's work is attracting attention on its

own merits, as we might expect with research findings or legal work that is unusually significant. While letters from the petitioner's superiors are important in providing details about his job experience and role in various projects, such letters fall short of establishing the petitioner's impact on the field beyond the walls of the institutions where he has worked.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's February 23, 2006 decision stated: "Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated in the labor certification context." We concur with the director's findings. There is no indication that the petitioner's work has influenced the fields of intellectual property or molecular biology research to a greater extent than other professionals in these fields having the same minimum qualifications.

On appeal, the petitioner submits a standardized law student recruitment letter (undated) issued by [redacted] Major General, U.S. Army, The Judge Advocate General, stating:

> As a graduating law student, you're probably wondering what to expect from your future career day to day. While I can't speak for other firms, here's what awaits you in the U.S. Army Judge Advocate General's (JAG) Corps.
>
> You will be a highly valued member of the best law firm in the world. You will be given important responsibilities from day one. You'll work with a group of the most knowledgeable and respected attorneys on earth. And you will have the opportunity to work in a variety of areas of law, on cases with local, national and even global significance.
>
> Granted, the Army JAG Corps is not for everyone. But for those with the motivation to excel, a desire to make a difference and a true appreciation for the practice of law, there is no career more rewarding.
>
> Founded in 1775, the Army JAG Corps is our nation's oldest law firm. We practice in jurisdictions around the world. As an Army JAG Corps attorney, you'll have the opportunity to practice virtually every type of law. You'll be responsible for your own clients and cases from the very beginning, working at a level many young lawyers don't experience for quite some time. Ultimately, you could be involved in some of the most significant cases in our nation's history.
>
> Finally, you'll have the honor of serving your country as an officer in the U.S. Army on active duty (full-time) or in the Army Reserve (part-time) – with access to a full range of benefits.
>
> To learn more, log on to info.goarmy.com/law20. You can also complete and return the enclosed card or call 1-866-331-4400. I'm confident you'll be impressed by the unique opportunities available in the Army JAG Corps.

The petitioner argues that the preceding U.S. Army Judge Advocate General Corps recruitment letter "is compelling evidence which demonstrates that he merits the benefit of national interest waiver" and shows that his "past record justifies projections of future benefit to the national interest of the United States." Nothing in

this generic letter, however, discusses the petitioner's past achievements in the field or specifies that he should be exempt from the requirement of a job offer based on the national interest. Nor is there evidence indicating that the petitioner intends to serve the national interest of the United States through employment with the U.S. Army Judge Advocate General Corps. For example, there is no documentation showing that the petitioner applied to the JAG Corps after receiving the above recruitment letter. The I-140 petition filed by the petitioner seeks to classify him as a member of the professions holding an advanced degree or an alien of exceptional ability for employment in the United States as a "Technology and Patent Specialist" or patent attorney, not as an attorney in the U.S. Army Judge Advocate General Corps. Further, there is no evidence that the petitioner meets the minimum qualifying standards for acceptance in the U.S. Army Judge Advocate General Corps. Utilizing the goarmy.com internet website address identified in the recruitment letter, the AAO obtained the following information at http://www.goarmy.com/jag/requirements.jsp (accessed on March 30, 2007) which states:

> Because there are many more applicants to the JAG Corps than openings, the Army is looking for the best and the brightest. In addition to academic requirements, candidates are expected to exhibit the qualities befitting an Officer in service to their country, such as leadership, physical fitness, commitment and professionalism. Among other things, a qualified candidate will:
>
> - Be mentally and physically fit
> - Be of good moral standing and character
> - Pass security clearance and citizenship requirements
> - Have graduated from an ABA-approved law school
> - Have been admitted to the bar of either a federal court or the highest court of any state in the United States or the District of Columbia
> - Applicants must be able to serve 20 years of active commissioned service before reaching the age of 62. Thus, for most applicants, the age requirement is be under the age of 42 at the time of entry onto active duty.

As there is no evidence showing that the petitioner intends to work as an officer for the U.S. Army JAG Corps or that he meets the preceding minimum requirements for acceptance, we find that the recruitment letter is irrelevant to the petitioner's claim that he is exempt from the labor certification process based on the national interest.

The petitioner asserts that *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 219, n. 4 allows him to demonstrate eligibility for a national interest waiver through the submission of recruitment letters showing that he was found, through a competitive recruitment and selection process, to be more qualified than U.S. applicants.

Matter of New York State Dept. of Transportation, 22 I&N Dec. at 219, n. 4 states:

> A limited exception to the minimum requirements rule exists, as set forth in Department of Labor regulations at 20 C.F.R. § 656.21a. (A U.S. college or university seeking to fill a teaching position can establish that the alien was found, through a competitive recruitment and selection process, to be more qualified than U.S. applicants.) This exception does not apply in this case.

The exception to the U.S. Department of Labor's minimum requirements rule mentioned in *Matter of New York State Dept. of Transportation* applies only to a U.S. employer seeking to fill a position for a college or university teacher or an alien represented to be of exceptional ability in the performing arts. The I-140 petition filed by the petitioner in this case does not meet these requirements. The regulation at 20 C.F.R. § 656.21a states:

> Applications for labor certifications for occupations designated for special handling.
>
> (a) An employer shall apply for a labor certification to employ an alien as a college or university teacher or an alien represented to be of exceptional ability in the performing arts by filing, in duplicate, an Application for Alien Employment Certification form, and any attachments required by this part, with the local Employment Service office serving the area where the alien proposes to be employed.

The record includes no evidence from the U.S. Department of Labor establishing that the petitioner's occupation is "designated for special handling" and certifying that his employment satisfies the regulatory criteria set forth at 20 C.F.R. § 656.21a. Therefore, we find that the exception to the U.S. Department of Labor's minimum requirements rule does not apply in the present case.

We accept that the petitioner has contributed to protecting the intellectual property rights of his immediate employers, but his ability to significantly influence the legal field beyond this work has not been adequately demonstrated. The petitioner has not shown that his individual accomplishments in the field are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

In this case, the available evidence lacks independent support for the assertion that the petitioner's specific contributions have outweighed those of others in his legal specialty. After reviewing the recommendation letters and other supporting evidence, we cannot conclude that petitioner's past contributions far exceed those of others who specialize in patent law and the protection of intellectual property. There is no evidence showing that the petitioner's work has had a significant national impact in the intellectual property field. Therefore, we find that that the petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on the national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation or specialty, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.